

ENTERED

MAR 06 2013

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

MAR 06 2013  
RWR  
Robert C. Winkler, Judge

LISA MCQUEEN, et al.,

) Case No. A 1 3 0 1 5 9 5

Plaintiffs,

) (Judge Robert Winkler)

-v-

)

MILTON R. DOHONEY , JR., et al.,

) TEMPORARY RESTRAINING ORDER

Defendants.

)

Now before the Court is Plaintiffs' motion for a temporary restraining order against Defendants Milton R. Dohoney, Jr. and City of Cincinnati (the "Defendants"). The matter came before the Court for expedited consideration based upon representations in the Verified Complaint and by Plaintiffs' counsel that a TRO is necessary, *inter alia*, to preserve the jurisdiction of the Court.

The matter is a dispute over the City's ordinance enacted today to enter into a long term lease of its on-street and off-street parking systems. Plaintiffs claim a legal right to referendum of the ordinance. Plaintiffs allege that the City is acting to improperly preclude a referendum by improperly declaring an emergency, and/or not complying with R.C. 731.30 when on the emergency language.

The Court has not had occasion to visit the merits of the Complaint. However, it is black letter law that "The constitutional right of citizens to referendum is of paramount importance," and courts liberally construe municipal referendum powers so as to permit rather than to preclude their exercise by the people. *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007 Ohio 4460, 872 N.E.2d 912, ¶ 8. Additionally, there is some support for the proposition that if the City is not enjoined from moving forward on its contract, it may pass a point beyond

which referendum may no longer be available. *See, e.g., Middletown v. Ferguson* 25 Ohio St. 3d 71, 76, 495 N.E.2d 380 (1985) (“Once having granted certain powers to a municipal corporation, which in turn enters into binding contracts with third parties who have relied on the existence of those powers, the legislature (or here, the electorate) is not free to alter the corporation's ability to perform.”). The loss of a constitutional rights of paramount importance is irreparable. The Court will act to preserve its jurisdiction to protect constitutional rights of paramount importance. Accordingly, the Court finds it appropriate to issue a temporary restraining order maintaining the *status quo* until such time as it has had the opportunity to review and rule upon the merits of this matter.

The Court also finds that Plaintiffs have a statutorily fixed time to circulate a referendum petition if this Court were to ultimately rule in their favor, which has begun to run. *See R.C. 731.29.* Accordingly, without prejudging the merits, and to preserve the rights of Plaintiffs if they prevail, it is appropriate to allow them to begin the referendum petition process.

The Court hereby GRANTS the motion for a Temporary Restraining Order.

It is ORDERED that Defendants Dohoney and the City of Cincinnati shall take no action to implement the Ordinance, nor shall they execute or perform under the Long-Term Lease and Modernization Agreement for the City of Cincinnati Parking System or accept any payment thereunder or related thereto.

It is further ORDERED that Defendants cooperate with Plaintiffs to the extent necessary to permit Plaintiffs to begin the circulation of a Referendum petition as soon as possible.

If not renewed, this order shall expire on March 20, 2013 at 4:00 pm.

No bond shall be required to effectuate this order.

The Court sets this matter for hearing at MAR 04 15 on March 10:00, 2013.  
AM

So Ordered at 4:00 pm on March 6, 2013.

Robert Winkler  
Judge Robert C. Winkler

Prepared by:

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